

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 25831 of 1999

Between:

K.Nagarjuna Reddy S/o Late. Kandula Obul Reddy
R/o Cumbum, Prakasam Dist.

..... PETITIONER

AND

1 Govt. of A.P rep by Secretary, Panchayat Raj & Rural Development

Department, Secretariat Buildings, Hyderabad.

2 The District Collector, Ongole , Prakasam Dist.

3 The Joint Collector, Ongole , Prakasam Dist.

4 The Revenue Divisional Officer, Markapuram Prakasam Dist.

5 The Mandal Revenue Officer, Bestavarapeta Mandal , Prakasam Dist.

6 The Chief Executive Officer Zilla Parishad, Ongole , Prakasam Dist.

7 Bestavarapeta Gram Panchayat rep by Executive Officer, Bestavarapeta
Mandal , Prakasam Dist.

8 The Sarpanch Bestavarapeta Gram Panchayat
Bestavarapeta Mandal , Prakasam Dist.

9 The President, Bestavarapeta Mandal Parishad , Prakasam Dist.

10 The Mandal Parishad Developmetn Officer Bestavarapeta mandal

Parishad, Bestavarapeta Mandal , Prakasam Dist.

11 Dudekula Siddaiah @ Karre Siddaiah S/o Santenna
R/o Bestavarapeta Village and Mandal , Prakasam Dist.

12 Satheli Venkateswarlu s/o s.Lingaiah
R/o Bestavarapeta Village and Mandal , Prakasam Dist.

13 Smt. Dudekula Gundreddipalle Hussain W/o Dudekula Gundreddipalle

Hussain, R/o Bestavarapeta Village and Mandal , Prakasam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order one in the nature of writ of Mandamus under Article 226 of Constitution of India declaring the action of the concerned official respondents in sanctioning and permitting the alienation of land admeasuring the Ac.0.02 cents situated in S.No. 33/3B of Bestavarapeta Village, Bestavarapeta Mandal , Prakasam Dist. in favour of respondents 11 and 12 and in allowing them to construct a shopping complex in the said land as illegal, arbitrary , without colour of authority and ultra vires their powers and consequently a) declare that it is Bestavarapeta Mandal Parishad which is the legal owner of the said Bhavi poramboke land measuring Ac 0.02 cents situated in S.No. 33/3B of Bestavarapeta Village and Mandal, Prakasam Dist. b) direct the concerned official respondents to demolish the shopping complex constructed by R.11 and 12 on the Bhavi poramboke measuring Ac.0.02 cents situated in S.No. 33/3B of Bestavarapeta Village and Mandal, Prakasam Dist. c) Direct the respondents to handover the peaceful and vacant possession of the said extent of Ac.0.02 cents situated in S.No.33/3B of Bestavarapeta Village and Mandal to the Besthavarapeta Mandal Parishad.

Counsel for the Petitioner: MR. MRUTYUNJAY, ADVOCATE FOR MR.V.T.M.PRASAD

Counsel for the Respondents 1 to 5: GP for Revenue

Counsel for the Respondents 7 and 8: MR.S.A.K. MYNODDIN

Counsel for the Respondents 11 and 12: MR. J. DASARADHI

Counsel for the Respondents 6, 9, 10 and 13: None appeared

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25831 OF 1999

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ORDER:

The petitioner at the time of filing the writ petition before this Court was an Hon'ble Member of Legislative Assembly elected from Cumbum Assembly Constituency in Prakasam District. He filed the present writ petition seeking the following reliefs:

"... that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Art.226 of the Constitution of India declaring the action of the concerned official respondents herein in sanctioning and permitting the alienation of land measuring Ac.0.02 cents situated in Survey No.33/3B of Besthavarapeta village, Besthavarapeta Mandal, Prakasam district in favour of respondent Nos.11 and 12 and in allowing them to construct a shopping complex in the said land as illegal, arbitrary, without colour of authority and ultra vires their powers and consequently

A) declare that it is Besthavarapeta Mandal Parishad which is the legal owner of the said Bhavi Poramboke land measuring Ac.0.02 cents situated in Survey No.33/3B of Besthavarapeta village of Besthavarapeta Mandal, Prakasam district.

B) direct the concerned official respondents to demolish the shopping complex constructed by respondents 11 and 12 on the Bhavi Poramboke measuring Ac.0.02 cents situated in Survey No.33/3B of Besthavarapeta village, Besthavarapeta Mandal, Prakasam district and

C) direct the concerned official respondents to handover peaceful and vacant possession of the said extent of Ac.0.02 cents situated in Survey No.33/3B of Besthavarapeta village and Mandal to the Besthavarapeta Mandal Parishad and pass such other order or orders as this Hon'ble Court may deem fit and necessary in the interest of justice.

Be it also noted that though a specific relief is not sought to that effect, in paragraph 2 of the affidavit accompanying the writ petition, the petitioner states that he filed the instant writ petition questioning the validity of the orders of the Government in G.O.Rt.No.536, Panchayat Raj & Rural Development, dated 24.03.1996 but a copy of the said G.O. is not annexed to the writ petition nor filed subsequently. The said Government Order is filed by the first respondent along with counter affidavit.

The case of the petitioner in brief is as follows. All Bhavi Porambokes situated in villages was originally vested with the District Boards or Zilla Boards under Section 126 of A.P. (Andhra Area) District Boards Act, 1920. After enactment of A.P.Panchayat Samithis and Zilla Parishads Act, 1959, the Government was empowered under Section 59 thereof to transfer the powers of the previous Zilla Boards to either Panchayat Samithis or Zilla Parishads. Accordingly, the Government issued a notification under Section 61 of the said Act vide G.O.Ms.No.624 dated 27.04.1960. By reason of which, the powers vested in Panchayat Samithis and Zilla Parishads, and maintenance of tanks, wells and public wells vested in the District Boards were made over to Panchayat Samithis under the said G.O. Therefore, it is only the Mandal Praja Praishads, which have exclusive control over the wells and public wells.

An extent of Acs.0.02 of land in Besthavarapeta village is classified as Bhavi Poramboke (Well Poramboke). By reasons of the notifications in G.O.Ms.No.624, the same is vested in Mandal Parishad. If the same is sold in public auction, it would fetch an amount of more fifteen lakhs. However, the Zilla Parishad, Ongole passed resolution No.1515 on 09.02.1999 resolving to transfer the land for a sum of Rs.10,500/- (Rupees ten thousand five hundred only) to respondents 11 and 12 herein. As per A.P.Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986, the public wells are vested in the Mandal Praja Parishad and Zilla Parishad has no power to pass such resolution. After enactment of A.P.Panchayat Raj Act, 1994 (for short, the Act), on 30.05.1994, under Section 243 thereof read with G.O.Ms.No.624, the powers and functions of the erstwhile District Board are vested in Mandal Parishad. But after the issue of G.O.Rt.No.536 dated 24.03.1999, Besthavarapeta Gram Parishad passed resolution No.8 on 30.05.1999 approving the plans submitted by respondents 11 and 12 for building shopping complex. These respondents constructed shopping complex on the land, which is situated on the State highway from Besthavarapeta to Tokapalle, which is known as bus stand area. Respondents 11 and 12 violated the permission granted by Gram Panchayat and made constructions by encroaching upon State Highway. The respondents have acted in a haste manner and interest of justice can be subserved only by ordering demolition of shopping complex constructed in the land in Survey No.33/3B. Respondents 11 and 12 are owners of

properties and respondent 12 and his brothers were already allotted house site pattas under relevant housing schemes.

The President of Besthavarapeta Mandal Parishad filed a writ petition being W.P.No.2341 of 1999 questioning the action of the respondents in not taking steps to alienate the land in Survey No.33/3B in favour of Gram Panchayat or Mandal Parishad for construction of bus shelter. As the said writ petition is filed on wrong assumption that the land is actually under the ownership of Zilla Parishad, the present writ petition is filed. The allotment of land to respondents 11 and 12 is *ultra vires* the powers of the Government and detrimental to public interest.

Counter affidavit is filed on behalf of the first respondent stating as follows. The land in Survey No.33/3B of Besthavarapeta village is classified as Zilla Parishad Bhavi Poramboke. The Mandal Revenue Officer, Besthavarapeta also informed Zilla Parishad by letter dated 19.03.1997 that the land is classified as Bhavi Poramboke land of Zilla Parishad, which is competent to pass resolution to transfer the property, that as per paragraph 5 of G.O.Ms.No.597, Panchayat Raj & Rural Development (Mandals II) Department dated 07.10.1989, Government is competent to transfer any immovable property and the Government issued the impugned Government Order transferring Acs.0.02 of land in favour of respondents 11 and 12. As per the report of the Mandal Revenue Officer, the cost of the land is Rs.108 per square yard and accordingly the total cost was fixed at Rs.10,500/- (Rupees ten thousand five hundred only). As the value of the site exceeds Rs.10,000/- (Rupees ten thousand only), it is only the Government, who is competent to transfer the site. Under the Act, the public wells did not vest in the Mandal Parishad. The allegation that the Mandal Parishad requested the sixth respondent to transfer the land for construction of bus shelter is denied as false. It is further stated that the District Collector addressed the Chief Executive Officer to place the matter before the general body for consideration of transfer of the site for construction of bus shelter but the Zilla Parishad sent the proposals to the Government to transfer the site to respondents 11 and 12 anticipating ratification by the general body of Zilla Parishad. The Zilla Parishad by resolution No.1515 dated 09.02.1999 agreed for transfer of site to respondents 11 and 12 and the same was made by the Government following the Rules issued by the Government from time to time. The action of the Government in accordance with the Act and the Rules made thereunder does not suffer from any illegality.

The learned counsel for petitioner Sri Mrutyunjay representing Sri V.T.M.Prasad submits that it is not competent for the Government to transfer the land in favour of respondents 11 and 12 as the land vests in Mandal Parishad, Besthavarapeta. **Per contra**, learned Government Pleader for Panchayat Raj Mr.Janaki Rami Reddy placed reliance on Section 192 of the Act as well as Schedule-I of the Act in support of the contention that community assets vests in Zilla Parishad and the Mandal Parishad or Gram Panchayat cannot claim exclusive rights over the land situated in the jurisdiction of the Zilla Parishad.

In the affidavit accompanying the writ petition, a reference is made to the A.P.

(Andhra Area) District Boards Act, 1920; the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 and the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986. A reference is also made to the orders of the Government in G.O.Ms.No.624, Planning & Local Administration, dated 27.04.1960, purportedly issued under Section 61 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959. Learned counsel for petitioner however has not made any attempt to place these enactments before this Court. He only contends that Zilla Parishad has no such power. In the absence of any attempt by the petitioner to substantiate various contentions raised in the affidavit, this Court is not in a position to adjudicate this issue. Be that as it is, by reason of Section 276 of the Act, which was enacted pursuant to coming into force of the Constitution (Seventy third) Amendment Act, 1992, the Andhra Pradesh Gram Panchayats Act, 1964; the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986; and the Andhra Pradesh Local Bodies Electoral Reforms Act, 1989 were repealed and no reliance can be placed on various statutes and notifications relied on by the petitioner.

Section 192 of the Panchayat Raj Act lays down that every Zilla Parishad shall exercise such powers and perform such functions as may be entrusted to it by Rules made in this behalf with regard to subjects enumerated in Schedule-I. As rightly contended by the learned Government Pleader, entry 29 of Schedule-I relates to maintenance of community assets. As a necessary corollary, it must be held that Zilla Parishad also can exercise its powers in relation to various subjects mentioned in Schedule-I of the Act. The submission that the land in Survey no.33/3B of Besthavarapeta village exclusively belongs to Mandal Parishad, Besthavarapeta is therefore misconceived. Indeed as stated in the counter affidavit of the first respondent (the report of the Mandal Revenue Officer was obtained), as per letter of the Mandal Revenue Officer dated 19.03.1997, the said land is classified as Zilla Parishad Poramboke, the petitioner has not denied the same and therefore in the absence of any strong rebuttal evidence, it must be held the land in question is Zilla Parishad land.

The Government issued G.O.Rt.No.536 on 24.03.1999 according permission to the Chief Executive Officer of the Zilla Parishad to transfer Acs.0.02 of land to respondents 11 and 12 on payment of market rate of Rs.10,500/- (Rupees ten thousand only). Admittedly respondents 11 and 12 obtained permission of Besthavarapeta Gram Pranchayat and constructed shopping complex. For reasons best known to the petitioner, he approached this Court by filing the present writ petition on 24.11.1999. As Member of Legislative Assembly, nothing prevented him to take up the issue with the Government immediately but he chooses to wait till the completion of construction by respondents 11 and 12. Due to unexplained delay and latches, if the impugned order is set aside, the same would cause prejudice to respondents 11 and 12. It is no doubt true that public property should be sold by conducting auction but that is not an inflexible rule. In appropriate cases, it is always permissible to the Government to alienate the land for market value without conducting public auction. The petitioner has not made out any case to find fault with

the impugned order.

The writ petition is misconceived and is accordingly dismissed.

(V.V.S.RAO,J)

06.10.2004.

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To

1 The Secretary, the Government of A.P, Panchayat Raj & Rural

Development Department, Secretariat Buildings, Hyderabad.

2 The District Collector, Ongole, Prakasam Dist.

3 The Joint Collector, Ongole, Prakasam Dist.

4 The Revenue Divisional Officer, Markapuram Prakasam Dist.

5 The Mandal Revenue Officer, Bestavarapeta Mandal, Prakasam Dist.

6 The Chief Executive Officer Zilla Parishad, Ongole, Prakasam Dist.

7 The Mandal Parishad Development Officer, Bestavarapeta Mandal

Parishad, Bestavarapeta Mandal, Prakasam Dist.

8 2 CCs to the G.P. for Revenue, High Court of A.P., Hyderabad (OUT).

9 2 CD copies.